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ABSTRACT

This digest defines sexual misconduct and offers guidelines that school boards and administrators can initiate to protect students from unwanted sexual behavior. The law recognizes two types of sexual misconduct: quid pro quo, when a school employee grants a student a favor in exchange for sexual gratification, and hostile environment, where unwanted and unwelcome verbal or physical contact of a sexual nature is sufficiently severe to limit a student's ability to participate in or benefit from an educational activity. Various studies demonstrate the pervasiveness of sexual misconduct and also indicate that the problem is probably underreported. Ways in which educators can recognize employees' sexual misconduct is by being alert to overly affectionate behavior, by noting the telling of sexual jokes, and by observing improper contact with students. Schools can fight sexual misconduct by devising a clear sexual-misconduct policy and by communicating that policy to all staff, parents, and students. Effective policies clarify the nature of sexual misconduct, contain provisions to protect the victim's confidentiality, and screen prospective employees. When an employee is suspected of sexual misconduct, reporting, grievance, and investigation procedures should be immediately implemented. Principals should prepare for accusations, disruptions in routine, and various levels of trauma among those involved. (Contains 12 references.) (RJM)

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Sexual Misconduct by School Employees

By Brad Goorian

Sexual misconduct in schools is a problem that has gained increasing attention, from the headlines to the High Court, in the last decade. Commonly defined as unwanted and unwelcome behavior of a sexual nature, sexual misconduct by teachers, administrators, and other employees is a problem of sufficient magnitude to warrant attention by school boards and school officials.

This Digest defines *sexual misconduct* and offers guidelines that school boards and administrators can initiate to try to protect their students from unwanted sexual behavior. Although the focus is on sexual misconduct by school employees, much of the information also applies to offenses by students toward other students.

What Types of Behavior Constitute Sexual Misconduct?

The law recognizes two types of sexual misconduct, *quid pro quo* and *hostile environment*. *Quid pro quo* (this for that) occurs when a school employee explicitly or implicitly grants a student a favor in exchange for sexual gratification. The employee may, as a condition for a student's participation in an educational activity or in return for an educational decision, request that the student submit to unwelcome sexual advances, grant sexual favors, or agree to engage in other verbal, nonverbal, or physical conduct of a sexual nature.

Hostile environment means unwanted and unwelcome verbal or physical contact of a sexual nature that is sufficiently severe, persistent, or pervasive to limit a student's ability to participate in or benefit from an educational program or activity.

Authors Charol Shakeshaft and Audrey Cohan offer a less legalistic definition of sexual misconduct that focuses on the conduct itself, rather than whether the conduct is "unwanted or unwelcome." They classify behavior in three levels. Level I sexual misconduct includes noncontact behavior such as exhibitionism and showing sexual pictures, as well as contact including fondling, touching, kissing, and sexual hugging. Level II is noncontact behavior that includes making sexual comments, taunting, and asking students about sexual activity. Level III is contact behavior that includes all types of sexual or genital contact that society readily recognizes as sexual misconduct.

The U.S. Department of Education's Office of Civil Rights (OCR) offers examples of legitimate nonsexual touching: A high school coach hugs a student who scored a goal; a kindergarten teacher uses a hug to console a child with a skinned knee. However, a teacher who repeatedly hugs and puts his or her arms around students under inappropriate circumstances can create a hostile environment.

What Is the Scope of Sexual Misconduct in the Nation's Schools?

No national statistics tracking the problem could be located. *Education Week* undertook a six-month study from March through August 1998. The study identified 244 cases of sexual misconduct, ranging from unwanted touching to "years-long sexual relationships and serial rape" (Caroline Hendrie, December 2, 1999).

Seven out of ten suspects were teachers, but principals, janitors, bus drivers, and librarians were also accused. Authorities ultimately concluded that only two of the reported cases were fabricated by students.

In a 1993 study by the American Association of University Women (AAUW), 25 percent of females and 10 percent of males in grades 8 through 11 said they had been sexually harassed in some way by school employees. Of those who said they had been sexually harassed, only 7 percent reported the incident to a teacher, and only 23 percent reported the incident to a parent. Thus underreporting may mask the overall severity of the problem.

How Can Schools Recognize Sexual Misconduct?

According to Robert Shoop (1999), many cases of sexual misconduct take place in private, and may be denied even by the victims themselves. However, adult abusers frequently give off warning signs. Shoop advises teachers and administrators to "trust their intuition" and heighten their scrutiny. If someone's behavior makes them uncomfortable or is unusual, ask questions, Shoop advises.

One sign may be overly affectionate behavior such as prolonged hugging and touching. Abusers may also engage in nonprofessional behavior such as telling sexual jokes and sexual teasing. Shoop reports that such verbal abuse may be a method of "grooming" victims. Adults who tell a sexual joke without being reprimanded may move on to touching a student's hair, breast, or buttocks. If the behavior is not reported, that adult may become emboldened and make sexual advances that will not be reported.

Abusers may seek to extend their contact with certain students beyond the school day; abusers have been known to have students over for parties and movies, take trips with students, and buy them frequent gifts. Alan L Barbee, an investigator for the Fairfax County (Virginia) schools, reports that abusers are experts at gaining children's trust, and are often lauded for their dedication in doing extra work with students and participating in extracurricular activities.

Shoop admonishes teachers and administrators to pay attention and take rumors, whispers, and oblique complaints, particularly from students, seriously. Often other students have known of a teacher-student relationship but were afraid to come forward out of a misguided loyalty to the student.

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Because socializing with students may be an appropriate means of establishing rapport, it is important to have districtwide policies in place that ensure prompt, professional investigation of complaints and incidents to determine their merit.

How Can Schools Fight Sexual Misconduct?

A first step is to devise a clear sexual-misconduct policy; communicate that policy to all staff, parents, and students; and strictly enforce it. School boards that do not have policies can look to the policies of other school districts for examples. Attorney George S. Crsci (1999) recommends that all school districts look to the U.S. Department of Education's Title IX guidelines. The following suggestions come from the Department's guidelines and various commentators.

Effective policies clarify the nature of sexual misconduct with simple age-appropriate examples. They specify grievance procedures that tell students, parents, and school employees where to file formal and informal complaints. They also include provisions for adequate, impartial, and timely investigation of complaints, including the opportunity to present evidence and witnesses.

Effective policies also contain provisions to protect the victim's confidentiality and ensure no retaliation. Parties should be provided notice of the outcome of complaints, and the school should take steps to prevent recurrence of the problem.

The policy and the problem of sexual misconduct should be discussed in all-school assemblies, orientations for new staff, and meetings with parents. School personnel should be trained to look for suspicious behavior and required to report suspected sexual misconduct.

Screening in the employment process is an important step. Many accused abusers are allowed to avoid criminal charges if they agree to resign quietly (Hendrie, December 9, 1998). Criminal background checks of applicants are important, including fingerprint checks, but they may not reveal "mobile molesters" who move on or strike deals with schools to resign without being convicted of any crime.

Administrators should take the further step, Shoop says, of asking each applicant and former employers if the applicant has ever been investigated or accused of sexual misconduct. The fear that such disclosure will invite defamation lawsuits may be overblown. More than half the states have laws that protect public employers when they provide good-faith responses to requests for information about employees (Hendrie, December 9, 1998).

Policies should also stipulate adequate procedures for investigating complaints. More than one person should be assigned the responsibility of receiving and screening complaints, in the event that one of those persons is an abuser. Every complaint should be taken seriously and be reduced to writing. Because school officials are not trained investigators, Shakeshaft and Cohan urge school districts to turn investigation of all charges over to professional child-abuse investigators or the police.

What Can School Districts Do When an Employee Is Suspected of Sexual Misconduct?

The school district's sexual-misconduct policy must be utilized if it is to have any effect. Reporting, grievance, and investigation procedures must be followed up immediately, in every case. Prompt, effective action may also shield the school district from legal liability. Under Title IX law, failure to respond to allegations of sexual misconduct, or failure to establish policies for doing so, may constitute "deliberate indifference," possibly subjecting the school district to civil damages from individuals or from the Department of Education.

Investigator Alan Barbee warns school officials to expect the following reactions, especially if charges are made public. Shocked faculty, parents, and students may rally around the accused. The accuser may be subjected to harassment and ridicule. Staff members may be distracted from their routines. The news media, attorneys, and investigators may contact school officials for information.

Barbee advises reporting the allegations to designated state officials, which is required by law in some form in all states, and turning investigations over to professionals. Shakeshaft and Cohan stress the importance of providing counseling for the students, who are often marginalized and traumatized. The authors also implore school district officials to contact their state licensing boards to try to revoke the teaching licenses of convicted abusers.

Caroline Hendrie (December 16, 1999) relates the story of a California principal who, when faced with allegations of sexual misconduct by two employees, made a "conscious decision" not to sweep the situation under the rug. The principal promptly contacted the police and state authorities, provided counselors for the students, and kept directly affected students, parents, and staff well informed. As a result, the "trauma to the students was low," and the principal received "amazing support from the community."

Sexual misconduct in schools is a problem that can devastate students, parents, school districts, and entire communities. Acknowledging the problem, educating for it, and following common-sense policies can go a long way to ridding our schools of sexual misconduct.

RESOURCES

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Williams, Verna, and Deborah L. Brake. "Sexual Harassment: Let the Punishment Fit the Crime." *WEEA Digest* (Oct. 1998): 3-4, 6.

Web Resource

U.S. Department of Education. "Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties." http://www.ed.gov/offices/OCR/sexhar00.html

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